Connaught Housing Development Sdn Bhd v Kerajaan Malaysia

HIGH COURT(PULAU PINANG) - CIVIL SUIT NO 21-23 OF 2001
KAMALANATHAN RATNAM J
16 OCTOBER 2003

Revenue Law *— Income tax — Collection of tax — Notice of assessment of tax — Notice of assessment of tax not complying with s 96(4)(c) — Whether notice defective*

Revenue Law *— Income tax — Certificate of Inland Revenue Department — Director General of Inland Revenue — Functions of — Whether any functions of Director General may be exercised by Senior Assistant or Assistant Director*

The respondent sued the appellant to recover assessed tax, penalties and interests thereon. The senior assistant registrar subsequently allowed the respondent's application for summary judgment and the appellant appealed. The appeal was filed late and the appellant applied for extension of time to file the notice of appeal. The respondent's only objection was that the appellant had no valid defence. The High Court judge was however of the view that in order to determine if there was any valid defence, he had to see if the appeal had merits. Thus he allowed the extension with RM350 as costs to the respondent. At the appeal, the appellant's counsel raised inter alia the following issues: (a) the notices of assessment did not comply with s 96(4)(c) of the Income Tax Act 1967 ('the Act') in that the place at which payment was to be made was not stated, the penalty for late payment was not stated and the notices did not point out any right of appeal existing under the Act; (b) the certificate issued under s 142(1) of the Act was signed by someone described as the 'Penolong Pengarah, Lembaga Hasil Dalam Negeri' (Assistant Director, Inland Revenue Board') when the Act only authorized the director general to sign.

Held, allowing the appeal and directing the matter to proceed to trial: There was no response by the respondent to the appellant's submission concerning the non-compliance with s 96(4)(c) of the Act and on this score alone the respondent had to succeed. On the second issue, the High Court would agree with the respondent's response that s 136(4) of the Act authorized the senior assistant and assistant director of the Inland Revenue to exercise any function of the director general under the Act, except his functions under ss 44, 137(1) and 150 of the Act (see pp 757I–758D).

[Bahasa Malaysia summary

Responden telah mendakwa perayu untuk mendapat kembali cukai yang ditaksir, penalti dan faedah. Penolong kanan pendaftar telah membenarkan permohonan responden untuk penghakiman terus dan

perayu merayu. Rayuan itu telah difailkan lewat dan perayu telah memfailkan permohonan untuk perlanjutan masa untuk memfailkan notis rayuan. Satu-satunya bantahan responden adalah perayu tidak mempunyai pembelaan yang sah. Hakim Mahkamah Tinggi berpendapat bahawa untuk melihat sama ada terdapat pembelaan yang sah beliau akan melihat sama ada rayuan itu mempunyai merit-merit. Oleh itu, beliau membenarkan permohonan perlanjutan dengan RM350 sebagai kos kepada responden. Pada masa rayuan, perayu telah membangkitkan antara lain isu-isu berikut: (a) notis-notis taksiran tidak mematuhi s 96(4) Akta Cukai Pendapatan 1967 ('Akta itu') kerana tempat pembayaran tidak disebutkan, penalti untuk bayaran lewat tidak disebutkan dan notis-notis tidak menunjukkan sebarang hak untuk merayu di dalam Akta itu; (b) sijil yang dikeluarkan di bawah s 142(1) Akta itu ditandatangani oleh seorang yang dikatakan sebagai 'Penolong Pengarah, Lembaga Hasil Dalam Negeri' apabila Akta hanya memberi kuasa kepada ketua pengarah untuk menandatangan.

Diputuskan, membenarkan rayuan dan mengarah perkara itu ke perbicaraan:

Tidak terdapat jawapan oleh responden kepada hujahan perayu mengenai ketidakpatuhan s 96(4)(c) Akta itu dan di atas ini responden mesti berjaya. Pada isu yang kedua, Mahkamah Tinggi bersetuju dengan jawapan responden bahawa s 136(4) Akta itu memberi kuasa kepada penolong kanan dan penolong pengarah Jabatan Hasil Dalam Negeri untuk menggunakan apa-apa fungsi ketua pengarah di bawah Akta itu, kecuali fungsi beliau di bawah ss 44, 137(5) dan 150 Akta itu (lihat ms 757I–758D).

Notes

For cases on collection of tax, see 10 *Mallal's Digest* (4th Ed 1999 Reissue) para 1999.

For cases on certificate of Inland Revenue Department, see 11 *Mallal's Digest* (4th Ed 1999 Reissue) para 1991.

Cases referred to

Kerajaan Malaysia v Dato'Hj Ghani Gilong [1995] 2 MLJ 119 (refd)

National Land Finance Co-operative Society Ltd v Director General of Inland Revenue [1994] 1 MLJ 99 (refd)

Legislation referred to

Income Tax Act 1967 ss 44, 96(4)(c) 103(4), 106, (3), 136, 137(1), 142(1), 150

Interpretation Act 1967 s 7

Ramesh Sathasivam (*Cheah Sin Chin* with him) (*Adnan Sundra & Low*) for the appellant.

Ashrina bte Ramzan Ali (Lembaga Hasil Dalam Negeri Malaysia) for the respondent.

Kamalanathan Ratnam J:

Facts

The Government of Malaysia assessed the appellant's tax for the year 1984 (additional), 1986 (additional), 1991 and 1992 as amounting to RM32,431, RM3,164.00, RM2,524,887.64 and RM132,188.83 respectively. The respondent contended that having assessed the said sums, the required notices for each of the respective years and all dated 15 October 1998, were posted to the appellant, to the last known postal address.

Because the appellant had failed to settle the sums claimed within the required 30 days from the date of receipt of the said notices, the respondent added on a further 10% to the amounts already due, pursuant to s 103(4) of the Income Tax Act 1967 ('the Act'). The additional sums thus accrued for the respective years were RM3,243.07 for 1984, RM316.64 for 1986, RM252,488.76 for 1991 and RM13,218.88 for 1992.

Since the appellant had failed to make the said payments within 60 days from the date of such increase it was levied a further fine of 5% pursuant to s 103(5A) of the Act. The said increases for the respective years were RM1,783.69 for 1984, RM174.02 for 1986, RM138,868.82 for 1991 and RM7,270.38 for 1992. The respondent thus sued the appellant for RM3,110,035.23 with interest at 8% from date of judgment and costs. Soon thereafter the respondent took out an application for summary judgment for the said sum with interest and costs.

Findings of the court

The learned senior assistant registrar having given summary judgment as prayed, the appellant appealed. However the notice of appeal filed was late by three days. The appellant then applied by way of encl 10 for extension of time to file the notice of appeal. The reason given for the late filing of the notice of appeal by three days was that immediately after the summary judgment having been obtained against him, the appellant changed to the present solicitors and in the course of obtaining the relevant cause papers the appellant was late by three days.

The only objection taken before me by Pn Ashrina for the respondent was that the appellant had no valid defence. Since that was the only objection, I indicated that in order to see if there was any defence I had to allow the application for extension in order to see if there was merit in the appeal. Puan Ashrina then asked for costs which I fixed at RM350.

In *Kerajaan Malaysia v Dato'Hj Ghani Gilong* [1995] 2 MLJ 119 the Federal Court held that the general words of s 136 of the Act read together with s 7 of the Interpretation Act 1967 (Consolidated and Revised 1989) are sufficient to permit the Acting Director General of Income Tax to sign and issue the certificate under s 142(1) of the Act for and on behalf of the Director General and that a certificate so issued, if valid by reason of that provision, was sufficient evidence of the amount, so due, and constituted sufficient authority to the court to give judgment accordingly. Mr Ramesh for the appellant conceded to this and also conceded that he was not challenging under this provision more so since s 106(3) of the Act states that in any proceedings under s 106 which deals with matters relating to recovery by suit, the court shall not entertain any plea that the assessment of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased.

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However it was the case of the appellant that since the Act is loaded heavily against the tax payer therefore the said Act ought to be construed literally. For this proposition he relied upon the then Supreme Court decision in *National Land Finance Co-operative Society Ltd v Director General of Inland Revenue* [1994] 1 MLJ 99 in which the court said at p 106 as follows:

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> "Nevertheless, we should remind ourselves of the principle of strict interpretation as stated by Rowlatt J. in *Cape Brandy Syndicate v Inland Revenue Commissioners* [12 TC 358] :
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> > ... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used ...
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> It has also been said by the Judicial Committee in Oriental *Bank Corporation v. Wright [1880] 5 AC 842, 856* 'that the intention to impose a charge upon a subject must be shown by clear and unambiguous language'.

E F

I agree that if there is any ambiguity in the interpretation of the relevant applicable section, then the benefit must be given in favour of the tax payer. Referring to the affidavit in support of the application for summary judgment, Mr Ramesh referred me to exh MR1 which contained the relevant notices of assessment for the year 1984 (additional), 1986 (additional), 1991 and 1992.

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Notices not served

The first issue raised was that these four notices were not served on the appellant since the said notices were addressed, not to the appellant's own address, but care of Arthur Anderson HRM Tax Services, Penthouse Suite 11-3, Bangunan FOP, Jalan Anson, 10400 Penang. The appellant referred me to s 96(1) of the Act which reads as follows:

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A 96 Notice of Assesment

(1)As soon as may be after an assessment, other than an assesment under section 90(1), has been made, the Director General shall cause a notice of assessment to be served on the person in respect of whom the assessment was made.

B It was the argument of the appellant that the said notice ought to have been served on the person of the appellant and not upon his accountants.

Firstly, this issue was not raised in the affidavit to enable the respondent to show that the appellant had indeed informed the respondent to address C all correspondence to its accountants. It is the practice of many large corporations or for that matter any one, to write to the tax department to serve all necessary notices and papers on its accountants to enable the said accountants to act promptly on tax matters.

Secondly, Pn Ashrina pointed out that in it's affidavit (encl 6) the D appellant had indeed admitted receiving the said notices. Once this was pointed out, counsel for the appellant indicated that he was dropping this issue.

Defect in the notice

E Mr Ramesh then argued that the said notices did not comply with s 96(4)(c) of the Act which reads as follows:

(4) A notice served under subsection (1) or (2) shall be in the prescribed form and shall indicate, in addition to any other material included therein -

F (a)in the case of a notice served under subsection (1) the year of assessment income and the tax charged thereon or the amount of the tax or additional tax, as the case may be;

(b)in the case of a notice served under subsection (2) , the year of assessment and the amount of the increase in the tax charged; and

G (c)in either case -

(i)the place at which payment is to be made;

(ii) the increase for late payment imposed by section 103(5), (6), (7) or (8); and

H (iii) any right of appeal which may exist under this Act.

Counsel pointed out that there was a total failure to comply with sub-s (c) in that, the place at which payment is to be made was not stated, the penalty for late payment imposed by s 103(4) of the Act was not stated and finally the notices did not point out to any right of appeal which might exist under I the Act.

Unfortunately there was no response to this issue from the respondent and on this score the appellant therefore must succeed.

Breach of s 142(1) of the Act

In this case the certificate issued under s 142(1) of the Act was signed by one Syed Hamid bin Syed Ahmad, who described himself on the certificate, as the Penolong Pengarah, Lembaga Hasil Dalam Negeri, Malaysia.

Section 142(1) of the Act reads as follows:

> In a suit under section 106 the production of a certificate signed by the Director General giving the name and address of the defendant and the amount of tax due from him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount.

Mr Ramesh argued that whilst the person signing has described himself as Penolong Pengarah, he ought to have in fact used the words 'for and on behalf of' the director general, since the Act only authorized the director general to sign. Puan Ashrina's response was to refer me to s 136(4) of the Act which has authorized the senior assistant and assistant director of Inland Revenue to exercise any function of the director general under the Act, except his functions under ss 44, 137(1) and 150. Furthermore the earlier cited case of *Kerajaan Malaysia* has sufficiently canvassed this point.

I therefore allowed the appeal with costs and set aside the summary judgment and directed the matter to proceed to trial.

Appeal allowed and matter directed to proceed to trial.

Reported by Andrew Christopher Simon